

In the Matter of the Appeal of:) OTA Case No. 241017761
)
Z. RAIHAN AND)
S. SULTANA)
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¹ Although appellants filed a single claim for refund, FTB issued a letter denying the claim for tax of \$5,340 and a separate interest abatement determination letter denying the claim for interest of \$616.60.

- Futurewei Technologies Inc., a Texas corporation, reporting wage income of \$130,610.50, California wages of \$131,477.09, and state income tax withheld of \$8,995.25.
2. Subsequently, FTB determined that appellants had improperly subtracted wage income of \$131,477. On May 22, 2023, FTB issued appellants a Notice of Proposed Assessment (NPA) proposing additional tax of \$5,340 plus applicable interest.² The NPA indicated that the total additional tax and interest (as of May 22, 2023) was \$5,916.58, and that appellants may protest the assessment by July 21, 2023.
 3. On July 5, 2023, appellants submitted payment by two checks (\$5,340 and \$576.58) totaling \$5,916.58, which FTB received on July 7, 2023.
 4. On August 21, 2023, FTB issued appellants a State Income Tax Balance Due Notice for interest of \$40.02, which appellants paid on August 30, 2023.
 5. On November 20, 2023, appellants submitted an untimely protest of the NPA, requesting a waiver of interest and disputing FTB's computation of additional tax. Since appellants had fully paid their liability, FTB treated the protest as a claim for refund.
 6. FTB denied the request for interest abatement and the claim for refund.
 7. Appellants timely filed this appeal.
 8. During this appeal, FTB discovered an error in its NPA³ and reduced the amount of proposed additional tax to \$5,259 and adjusted the interest accordingly, resulting in a revised liability of \$5,865.91.⁴ FTB submits a pro forma tax return it prepared for this appeal, reflecting the inclusion of appellant Raihan's wage income in taxable income and computing revised tax of \$5,259. As appellants' July 7, 2023 payments (\$5,916.58) were sufficient to cover the full revised liability (\$5,865.91), FTB agrees to refund \$91.22, which is comprised of \$81 of overpaid tax (additional tax of \$5,340 less the revised tax of

² FTB assessed interest of \$576.58 for the period July 15, 2020, through May 22, 2023.

³ FTB states that the NPA properly added back wage income of \$131,477 to taxable income but failed to reflect a reduction to taxable income of \$867 that appellants added back on their Schedule CA.

⁴ FTB assessed revised interest of \$606.91 for the period July 15, 2020, through July 7, 2023, compared to original interest of \$616.60 (\$576.58 + 40.02) for the period of July 15, 2020, through August 30, 2023 (the date of appellants' last payment of \$40.02).

\$5,259) and \$10.22 of interest (original interest of \$616.60 less revised interest of \$606.91 plus an interest allowance of \$0.53).⁵

DISCUSSION

Issue 1: Whether appellants have established error in FTB's assessment of tax.

California residents are taxed on their entire taxable income, regardless of source, while nonresidents are only taxed on income from California sources. (R&TC, §§ 17041(a), (b) & (i), 17951(a).) Wage income is included in gross income and taxable. (R&TC, § 17071; IRC, § 61; *Appeal of Balch*, 2018-OTA-159P.) FTB's determination is presumed to be correct, and taxpayers bear the burden of proving error with credible, competent, and relevant evidence as to the issues in dispute. (*Appeal of Wright Capital Holdings, LLC*, 2019-OTA-219P.) Unsupported assertions are not sufficient to satisfy taxpayers' burden of proof. (*Ibid.*)

Here, it is undisputed that appellants were California residents and that appellant Raihan earned wage income of \$131,477 during the 2019 tax year. As appellants are California residents, appellant Raihan's wage income is considered taxable in California, even if the employer is a corporation based outside of California. Therefore, the NPA correctly added back the wage income to appellants' taxable income.

Appellants argue that they correctly reported their taxable income based on two different tax preparation software programs. Appellants assert that FTB has not shown "the computational mistake" in their tax return. However, appellants have not explained why they are entitled to subtract their wage income from their taxable income. Furthermore, during this appeal, FTB provided a copy of a pro forma tax return showing the basis for its assessment of tax, namely, the inclusion of appellant Raihan's wage income in taxable income. Accordingly, appellants have failed to establish that FTB's assessment of tax is incorrect.

Issue 2: Whether appellants have established a basis for interest abatement.

If any amount of tax is not paid by the due date, then interest is required to be imposed from the due date until the date the taxes are paid. (R&TC, § 19101(a).) Imposition of interest is mandatory; it is not a penalty, but it is compensation for taxpayers' use of money after it should have been paid to the state. (*Appeal of Moy*, 2019-OTA-057P.) There is no reasonable

⁵ Because FTB reduced the amount of additional tax, there was a corresponding reduction to the interest amount shown on the NPA (\$576.58 for the period July 15, 2020, through May 22, 2023). Thus, appellants' July 7, 2023 payment (\$5,916.58) was enough to cover the amount due on the date of the NPA plus any additional interest accrued after the NPA was issued until payment was received (from May 23, 2023, through July 7, 2023).

cause exception to the imposition of interest, and interest is mandatory except where abatement is authorized under the law. (*Ibid.*) To obtain interest relief, taxpayers must qualify under one of the waiver provisions of R&TC section 19104 (unreasonable error or delay by FTB in the performance of a ministerial or managerial act), 19112 (extreme financial hardship caused by significant disability or other catastrophic circumstance),⁶ or 21012 (reasonable reliance on FTB's written advice). (*Appeal of Moy, supra.*)

Under R&TC section 19104, FTB may abate all or a part of any interest on a deficiency to the extent that interest is attributable in whole or in part to any unreasonable error or delay committed by FTB in the performance of a ministerial or managerial act. (R&TC, § 19104(a)(1).) An error or delay can only be considered when no significant aspect of the error or delay is attributable to the taxpayers and after FTB has contacted the taxpayers in writing with respect to the deficiency or payment. (R&TC, § 19104(b)(1).) Jurisdiction for interest abatement is limited by statute to a review of FTB's determination for an abuse of discretion. (R&TC, § 19104(b)(2)(B).) To show an abuse of discretion, taxpayers must establish that, in refusing to abate interest, FTB exercised its discretion arbitrarily, capriciously, or without sound basis in fact or law. (*Appeal of GEF Operating, Inc.*, 2020-OTA-057P.)

Appellants argue that the interest is attributable to FTB's unreasonable delay in issuing the NPA almost three years after appellants filed their 2019 tax return. Appellants also argue that no additional interest should have accrued after the date of the NPA (May 22, 2023) because appellants paid the amount reflected on the NPA before the due date to protest the NPA.⁷

However, any interest accrued before FTB issued the NPA, that is, when FTB contacted appellants in writing with respect to the deficiency, is not eligible for abatement under R&TC section 19104. Moreover, FTB timely issued the NPA within the four-year statute of limitations.⁸ As for any additional interest assessed between the period FTB issued the NPA (on May 22, 2023) and when appellants made payments (on July 7, 2023), the NPA clearly states that the amount of interest shown on the NPA is for the period July 15, 2020, through May 22, 2023. Thus, interest continued to accrue until appellants paid the tax due. The fact

⁶ OTA does not have authority to review FTB's denial of a request for interest abatement under R&TC section 19112. (*Appeal of Moy, supra.*)

⁷ Although appellants paid the NPA liability on July 7, 2023, appellants did not submit a protest of the NPA until November 20, 2023. The protest was untimely, but because appellants had already paid the full liability, FTB treated the protest as a claim for refund.

⁸ An NPA is timely if issued within four years after a return was filed. (R&TC, § 19057(a).)

that appellants paid the amount reflected on the NPA before the due date to protest the NPA does not stop the accrual of interest after the date the NPA was issued until the date payment was received by FTB.

Based on the foregoing, OTA finds that FTB did not abuse its discretion in denying appellants' request for interest abatement.

HOLDINGS

1. Appellants have not established error in FTB's assessment of tax.
2. Appellants have not established a basis for interest abatement.

DISPOSITION

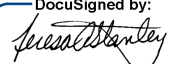
Aside from the refund of \$91.22 which FTB has conceded on appeal, FTB's actions denying the claim for refund are sustained.

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Steven Kim
Administrative Law Judge

We concur:

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Teresa A. Stanley
Administrative Law Judge

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L. Katrine Shelton
Administrative Law Judge

Date Issued: 6/30/2026